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Attorneys for Petitioner
Frank J. Dieber

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
IN THE MATTER OF THE COMPLAINT

Civil Action No.: 08 CV 2042

of

FRANK J. DIEBER, as owner of a 1988 20-foot Formula SR1 vessel for Exoneration from or Limitation of Liability.

ANSWER TO COUNTER CLAIM

Petitioner.

FRANK J. DIEBER (hereinafter "Petitioner"), by his attorneys, RUBIN, FIORELLA & FRIEDMAN, LLP, hereby Answers the Counter Claim of Claimant TARA PINAND, upon information and belief, as follows:

ANSWERING FIRST CAUSE OF ACTION

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "1" of the Counter Claim.
2. Admits the allegations contained in paragraph "2" of the Counter Claim.
3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "3" of the Counter Claim.
4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "4" of the Counter Claim.
5. Denies the allegations contained in paragraph "5" of the Counter Claim.

6. Denies the allegations contained in paragraph "6" of the Counter Claim.

7. Denied as stated. Additionally, paragraph "7" of the Counter Claim contains conclusions of law, to wit, a responsive pleading is not required. All conclusions of law are appropriately referred to the honorable Court.

8. Denied as stated. Additionally, paragraph "8" of the Counter Claim contains conclusions of law, to wit, a responsive pleading is not required. All conclusions of law are appropriately referred to the honorable Court.

9. Denies the allegations contained in paragraph "9" of the Counter Claim.

10. Denies the allegations contained in paragraph "10" of the Counter Claim.

11. Denies the allegations contained in paragraph "11" of the Counter Claim.

ANSWERING SECOND CAUSE OF ACTION

12. Answering paragraph "12" of the Counter Claim, Petitioner repeats and realleges each and every answer in paragraphs "1" through "11" of the Answer as if set forth at length herein.

13. Denies the allegations contained in paragraph "13" of the Counter Claim.

14. Denies the allegations contained in paragraph "14" of the Counter Claim.

15. Denies the allegations contained in paragraph "15" of the Counter Claim.

16. Denies the allegations contained in paragraph "16" of the Counter Claim.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

10. The incident alleged in the Claim, which is denied, occurred without the fault, privity or knowledge of Petitioner. Petitioner is therefore entitled to exoneration from, or

limitation of liability, to the value of his vessel in the amount of \$7,500 pursuant to the Limitation of Liability Act of 1851, 46 U.S.C. §30501 *et. seq.*

SECOND AFFIRMATIVE DEFENSE

11. Assumption of Risk.

THIRD AFFIRMATIVE DEFENSE

12. If Claimant sustained any injuries, damages, and/or illnesses as alleged in the Claim, which is denied, said injuries, damages, and/or illnesses were caused solely and/or were contributed to by the negligence, fault, want of care, on the part of Claimant or on the part of third-parties for whom Petitioner is not liable.

FOURTH AFFIRMATIVE DEFENSE

13. That the injuries, damages, and/or illnesses alleged to have been sustained by Claimant were caused, in whole or in part, through the culpable conduct of Claimant, without any negligence on the part of Petitioner and without his privity or knowledge and that Petitioner seeks exoneration from liability and/or limitation of liability and/or dismissal or reduction in any recovery that may be had by Claimant in the proportion to the culpable conduct, attributable to Claimant bears to the culpable conduct, which caused said injuries, damages, and/or illnesses.

FIFTH AFFIRMATIVE DEFENSE

14. Claimant has failed to mitigate her damages, if any.

SIXTH AFFIRMATIVE DEFENSE

15. Damages, if any, were the result of the sole negligence of Claimant.

SEVENTH AFFIRMATIVE DEFENSE

16. Negligence, if any, on the part of Petitioner, which is denied, was not the

proximate cause of any injuries, damages, and/or illnesses sustained by Claimant.

EIGHTH AFFIRMATIVE DEFENSE

17. The Claim fails to state a cause of action upon which relief can be granted.

NINTH AFFIRMATIVE DEFENSE

18. Claimant's injuries, damages and/or illnesses, if any, were pre-existing and not caused by Petitioner.

WHEREFORE, Petitioner prays that the Counter Claim be dismissed and/or that he be exonerated from liability and/or limit any liability to the value of the vessel in the amount of \$7,500 and that he be awarded fees, costs, and for any further relief the court deems just and equitable.

Dated: May 12, 2008
New York, New York

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By: 

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